

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, June 14, 2000.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE CLASSIFICATION OF WOMEN'S BODY SUPPORTING GARMENTS

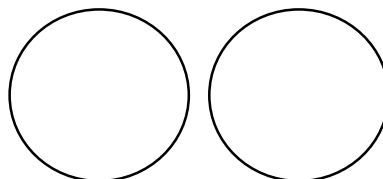
AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of classification ruling letter and treatment relating to the classification of certain women's body supporting garments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of certain women's body supporting garments and revoke any treatment previously accorded by Customs to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before July 28, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations



U.S. CUSTOMS SERVICE

2

and Rulings, 1300 Pennsylvania Avenue, N.W., Washington D.C. 20229.

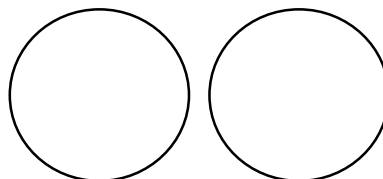
FOR FURTHER INFORMATION CONTACT: John Elkins, Textile Branch, (202) 927-2394.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of certain women's body supporting garments. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) F80151, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other



reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

In NY F80151, dated December 10, 1999, the classification of certain women's body supporting garments was determined to be in heading 6108, HTSUS. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of this ruling, Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY F80151, and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 963631 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 7, 2000.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

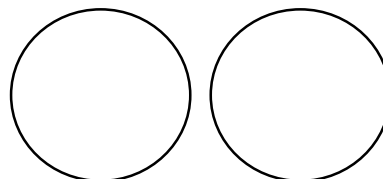
[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 10, 1999.
CLA-2-61:RRNC TA 354 F80151
Category: Classification
Tariff No. 6108.92.0015

MS. GAIL T. CUMINS
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
*75 Broad Street
New York, NY 10004*

Re: The tariff classification of ladies' wearing apparel from Costa Rica.



U.S. CUSTOMS SERVICE

4

DEAR MS. CUMINS:

In your letter dated November 30, 1999, you requested a tariff classification ruling on behalf of Warnaco Inc. regarding an Olga line garment. The provided sample will be returned as per your request.

Style 4920 is a ladies' underwear bodysuit constructed of a 88% nylon 12% spandex knitted fabric. The garment features underwire cups, adjustable shoulder straps, elasticized leg openings, and a bra-type hook and eye adjustable closure at the lined crotch.

The applicable subheading for the style 4920 will be 6108.92.00 15, Harmonized Tariff Schedule of the United States (HTS), which provides for Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: other: of man-made fibers * * * underwear: other: women's. The rate of duty will be 16.5 percent ad valorem. In 2000, the rate of duty will be 16.4 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Brian Burtnik at 212-637-7083.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:CR:TE 963631 jb

Category: Classification

Tariff No. 6212.90.0030

GAIL T. CUMINS

SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.

Seventy-five Broad Street

New York, NY 10004

Re: Classification of women's body supporting garments.

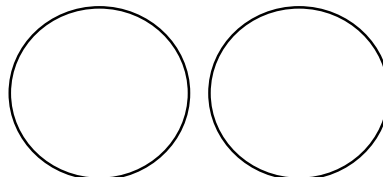
DEAR MS. CUMINS:

This is in response to your letter, dated January 4, 2000, on behalf of your client, Warnaco Inc., requesting reconsideration of New York Ruling Letter (NY) F80151, dated December 10, 1999, for certain women's body supporting garments. A sample was submitted to this office for review, in addition to substantive documentation demonstrating how this garment is marketed and sold.

Facts:

The submitted sample, referenced style number 4520, is stated by you to be a "multi-functional" one piece body supporting garment. It is composed of 88 percent nylon and 12 percent spandex knit fabric. The one piece garment features a brassiere with underwires and adjustable elasticized straps, and a panty-girdle portion (which features a cotton liner) that extends from below the bust down over the hipline, culminating in a hook and eye closure between the legs. There are elasticized bands around the leg openings and the back of the brassiere. The subject garment, size 40 C, is sized based upon the brassiere.

In NY F80151 the subject garment was classified in heading 6108, HTSUS, which provides for, among other things, certain women's underwear. You disagree with this



classification and believe that the classification determination in that ruling disregards the established limitations as to the scope of "underwear" within heading 6108, HTSUS, and fails to recognize that this multi-functional support garment is appropriately classified in heading 6212, HTSUS, in the appropriate provision for "other" support garments.

Issue:

What is the proper classification of the merchandise at issue?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is in accordance with the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI will be applied, in the order of their appearance.

Heading 6108, HTSUS, provides for, among other things, women's or girls' slips, petticoats, briefs and panties. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN) to that heading state that "this heading covers two separate categories of knitted or crocheted clothing for women or girls, namely slips, petticoats, briefs, panties and similar articles (underclothing) and nightdresses, pyjamas, negliges, bathrobes (including beachrobes), dressing gowns and similar articles."

Heading 6212, HTSUSA, provides for, "brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted". Within this heading are four subheadings which provide for the following types of garments: brassieres at subheading 6212.10, HTSUS; girdles and panty girdles at subheading 6212.20, HTSUS; corsets at subheading 6212.30, HTSUS; and other body supporting garments at subheading 6212.90, HTSUS. The EN to heading 6212, HTSUS, state, in pertinent part:

This heading covers articles of a kind designed for wear as body-supporting garments or as supports for certain other articles of apparel, and parts thereof. These articles may be made of any textile material including knitted or crocheted fabrics (whether or not elastic).

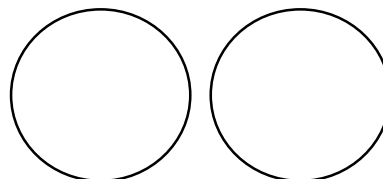
The heading includes, *inter alia*:

- (1) Brassieres of all kinds.
- (2) Girdles and panty-girdles.
- (3) Corselettes (combinations of girdles or panty-girdles and brassieres).
- (4) Corsets and corset-belts. These are usually reinforced with flexible metallic, whalebone or plastic stays, and are generally fastened by lacing or by hooks.

All of the above articles may be furnished with trimmings of various kinds (ribbons, lace, etc.), and may incorporate fittings and accessories or non-textile materials (e.g., metal, rubber, plastics or leather).

Although the subject garment is worn as a combination brassiere and girdle, i.e., as an underwear garment, it is specifically designed to provide support for the wearer's body above the waist in addition to below the waist. Accordingly, it is more specifically provided for as a body supporting garment of heading 6212, HTSUS. We find support for the classification of this garment in heading 6212, HTSUS, in the EN to that heading which state that "corselettes" are among the articles provided for under that heading. A "corselette" is defined as:

Under-garment combining girdle or lightly-boned corset and brassiere. Also called *foundation* or *one-piece* corset. *The Fashion Dictionary*, by Mary Brooks Picken, (1973), at 89.



U.S. CUSTOMS SERVICE

6

Foundation with firm support achieved by boning, power-net side panels, and front panel of non-stretch nylon taffeta. Sometimes has an inner belt which hooks separately to help flatten abdomen. Bra top is often of nylon lace with marquisette lining with adjustable shoulder straps. Foundation is fastened by hooks underneath zipper and has 6 garters. *Essential Terms of Fashion*, by Charlotte Mankey Calasibetta, (1986), at 64.

* * *, a one-piece garment combining brassiere and girdle, was developed in the 1930s and is still worn. *20,000 Years of Fashion*, by Francois Boucher, (1983), at 652.

Accordingly, so long as the subject garment can provide the support required of a "body supporting garment" as set forth under heading 6212, HTSUS, classification in this heading is proper. Close review of the subject merchandise reveals that although the fabric is lightweight (composed of 88 percent nylon and 12 percent spandex, the fabric provides substantial support to the wearer. Additionally, the bra portion of this garment features the traditional characteristics of a brassiere such as cups that provide support by holding the bust firmly in place, and in the case of this garment, underwire for extra support; elasticized adjustable shoulder straps which provide a secure fit and an elasticized back.

Lastly, we have reviewed all of the documentation submitted to us demonstrating that this garment is in fact marketed and sold as a "body slimming" garment and conclude that this garment fits squarely within what is intended as a body support garment of heading 6212, HTSUS. As such, the proper classification for this garment is in the applicable provision under heading 6212, HTSUS.

Holding:

NY F80151 is hereby revoked.

The subject merchandise, referenced style number F80151, is properly classified in subheading 6212.90.0030, HTSUSA, which provides for, brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: other: of man-made fibers or man-made fibers and rubber or plastics. The applicable general column one rate of duty is 6.8 percent *ad valorem* and the quota category is 659.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Status on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

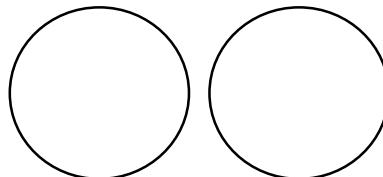
Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local Customs office prior to importing the merchandise to determine the current applicability of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION OF GENERAL PROGRAM TEST FOR
TRANSFER OF INTERNATIONAL IN-TRANSIT BAGGAGE

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.



SUMMARY: This document announces a modification of the program test for the transfer of international in-transit baggage that was initially announced in a notice published in the Federal Register on February 23, 2000. This document replaces the test conditions of operation, the application procedure, and the revocation process that were set forth in the initial announcement of the test. This document also sets forth a new application period and a new test commencement date.

DATES: The testing period will commence no earlier than August 15, 2000 and will run for approximately one year. To participate in the test, a written application must be filed with Customs on or before July 31, 2000.

ADDRESSES: Air carriers that have entered into an agreement with the Government by signing an Advance Passenger Information System (APIS) Memorandum of Understanding may apply to participate in the program test by submitting a letter of application to the port director with jurisdiction over the airport where the transfer of international in-transit baggage will occur. Air carriers that wish to participate in the test can apply to participate in the APIS program by contacting Mike Cronin, Acting Associate Commissioner for Programs, U.S. Immigration & Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536.

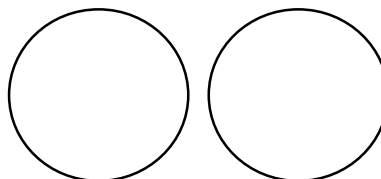
FOR FURTHER INFORMATION CONTACT: For operational or policy matters: Steve A. Gilbert, Office of Field Operations (202) 927-1391. For regulatory matters: Larry L. Burton, Office of Regulations and Rulings (202) 927-1287.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On February 23, 2000, Customs published a general notice in the Federal Register (65 FR 9054; referred to herein as the notice of February 23, 2000) announcing a program test that allows participating air carriers to more efficiently transfer accompanied air passenger baggage from one aircraft entering the United States to another aircraft departing from the United States enroute to a foreign destination. Under the test, participating air carriers will not be required to file an air cargo manifest (Customs Form (CF) 7509) but will instead electronically transmit certain required information to Customs while a flight is enroute to the United States.

The notice specified that the test covers accompanied, international, in-transit, checked baggage that arrives in the United States aboard one aircraft and departs from the United States aboard another aircraft. This baggage is referred to as "international-to-international" baggage by Customs and those who deal with the ordinary transport and



processing of such baggage. Thus, hereafter in this document, the baggage will be referred to as ITI baggage.

The notice explained the air cargo manifest requirement and the ordinary ITI baggage processing procedure as provided for under the Customs Regulations; described the Advance Passenger Information System (APIS) program; set forth the eligibility requirements for participation in the test, the information transmission and baggage processing procedures required under the test, and the test application process; and requested comments on all aspects of the test. The notice should be consulted for a fuller understanding of the various aspects of the program test, excluding those aspects of the notice that are replaced or changed in this document: the conditions of operation, the application and revocation processes, and the new time elements relative to the application process and commencement of the test.

On April 3, 2000, Customs published a general notice in the Federal Register (65 FR 17550) to announce an extension of the time period for applying to participate in the test. The application (statement filing) deadline was extended to May 26, 2000.

After review of the comments received and a reevaluation of the test, Customs has determined that the test should be modified. Thus, this document modifies the test by replacing the "Conditions of Operation" section, "The Application Process" section, and the "Revocation and Reinstatement" section that were set forth in the notice of February 23, 2000. It also extends the deadline for applying to participate in the test and sets a new date for commencement of the test.

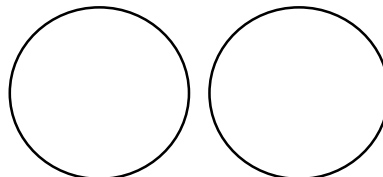
MODIFICATION OF THE PROGRAM TEST

The following sections of this document replace the corresponding sections of the notice of February 23, 2000. The "Revocation and Reinstatement" section of that notice is renamed hereinbelow the "Misconduct" section.

Conditions of Operation

The test conditions of operation describe the procedures that govern air carriers participating in the test. Any carrier that has already submitted a statement of acceptance of the test conditions previously published must reapply in accordance with the application process set forth in this document. The conditions of operation set forth in the February 23, 2000, test announcement are hereby replaced by the conditions of operation set forth below.

The ITI baggage program test provides an alternative to the ordinary ITI baggage processing procedure of § 122.101(a) of the Customs Regulations (19 CFR 122.101(a)) and replaces the regulatory requirement of § 122.48(e) (19 CFR 122.48(e)) to manually or



electronically file with Customs (at the port of arrival) an air cargo manifest (CF 7509) for ITI baggage. Test participants are required to follow the following test conditions of operation:

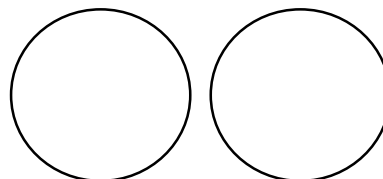
(1) The APIS component: Prior to arrival of the aircraft in the United States, the test participant must transmit to Customs, via APIS, the information required under the terms of the APIS Memorandum of Understanding (MOU).

(2) The test participant also must submit to Customs (at the port of arrival), at least two hours prior to arrival of the aircraft, an "onward connector listing," a document that identifies the arriving flight number, in-transit passenger names, their checked ITI baggage tag numbers, and their ultimate foreign destination. For any flight of less than two hours duration, the "onward connector listing" must be submitted to Customs (at the port of arrival) at the time of the aircraft's departure (from the port of departure enroute the United States). The participant may provide this information in the form of a computer generated report, screen print, or other hard copy document manually submitted to Customs in a timely manner, or by allowing Customs to electronically access its reservations database in order that Customs may extract an "onward connector listing" containing the required information in a timely manner.

(3) The test participant must perform the staging and transferring of ITI baggage in the Customs approved security area. For purposes of this test, the Customs approved security area is as defined in 19 CFR 122.181 and includes the Federal Inspection Services (FIS) area, the aircraft deplaning and ramp area, and other restricted areas designated by the port director. The Assistant Commissioner, Office of Field Operations, may authorize stricter limits to the security area, for purposes of the test, where a security or enforcement threat exists. Access to the Customs security area must be limited to personnel engaging in Customs related business and possessing Customs approved identification cards (holograms). (Participants should contact the port director with jurisdiction over the airport involved for specific information regarding the Customs airport security area (19 CFR Subpart S (§ 122.181 *et seq.*)).

(4) For plane-to-plane transfers, test participants will be allowed a one hour maximum connection time at each airport for directly transferring ITI baggage from one plane to another without having to be placed or stored in the Customs approved security area.

(5) The test participant must ensure that all carrier employees or contract ramp service employees with access to the ITI baggage will have and display (or produce upon demand) approved identification issued under the Customs Regulations (19 CFR Part 122 Subpart S).



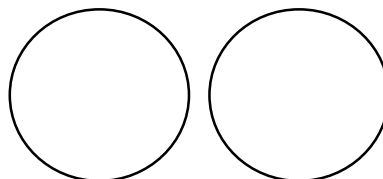
(6) The test participant must timely deliver ITI baggage to the Customs approved security area or to the FIS area for inspection, if and when requested.

(7) The test participant must maintain direct control of the ITI baggage until the departing carrier responsible for exporting the baggage has signed a receipt that will transfer bond liability for the baggage from the participant to the departing carrier. No transfer of bond liability, and thus no receipt, is required when the participant is importing and exporting the baggage. The participant may waive the receipt requirement, relieving the departing carrier from signing a receipt and accepting liability, only when the participant assumes liability for the baggage movement through the United States. The participant's application must reflect this assumption of liability and the identity of any departing carriers it has waived from the receipt signing process. The application may be amended at any time to add or delete the identity of such carriers, as changed circumstances warrant.

Air carrier applicants that are accepted into the program test will be required to follow the above conditions of operation. If for any reason, however, a participant's APIS or electronic reservations database system becomes temporarily inoperative, Customs is unable to receive APIS information transmitted by a participant, or access to the participant's reservations database is otherwise not available, the participant will be required to submit a paper document listing the required APIS passenger information and the ITI baggage information prior to the arrival of the flight.

The Application Process

Participation in the test program is open only to APIS participating air carriers in good standing (performing under the APIS MOU at acceptable levels). To apply to participate in the test, APIS participating air carriers must submit a written application to the appropriate port director (with jurisdiction over the airport where the transfer of ITI baggage will occur) within 45 days following publication of this notice in the Federal Register. The application must be signed by an authorized official of the carrier and must indicate that the carrier wishes to voluntarily participate in the test. The application must reflect any assumption of liability for the baggage in accordance with test condition of operation 7. The application must also designate a local point of contact and telephone number for use by Customs personnel at the port. Customs will issue a written notification informing applicants whether their applications have been accepted or rejected, in the latter instance, with reasons therefore. A carrier may appeal a rejected application to the Assistant Commissioner, Office of Field Operations, within 15 days of the date of the rejection notice.



To apply to participate in the APIS program, a prerequisite to participating in the test program, air carriers should contact the Customs port director with jurisdiction over the airport where they intend to operate under the test or contact Mike Cronin, Acting Associate Commissioner for Programs, U.S. Immigration & Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536.

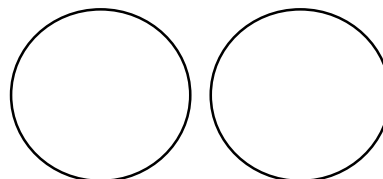
Misconduct

If a test participant fails to follow the procedures or meet the requirements set forth in the "Conditions of Operation," or otherwise fails to follow applicable laws or regulations, the participant may be suspended from the test and or, where warranted, subjected to penalties, and or liquidated damages, and or other administrative sanctions. Customs has the discretion to fully or partially suspend a participant based on the determination that an unacceptable compliance risk exists. This suspension may be invoked at any time after a carrier's acceptance in the test.

A notice of proposed suspension from the test will be issued by the port director to the participant, apprising the participant of the facts and or conduct warranting suspension and whether the suspension is full or partial. The notice will state that the participant's written response must be received by Customs within 15 calendar days from the date of its issuance (the 15 day response period). The notice also will inform the participant that a failure to timely respond will result in the suspension taking effect on the day after the 15 day response period expires and that the notice of proposed suspension becomes a notice of suspension, and is effective, on that date.

Where the participant elects to respond, the participant should address the facts and or conduct charges contained in the notice of proposed suspension, provide an explanation of the problems that resulted in the proposed suspension, and state how it has corrected these problems and will maintain compliance. The port director will decide whether to suspend the participant from the test or allow continued participation. The port director will so notify the participant in writing. Where suspension is warranted, the port director will issue a notice of suspension providing reasons for the suspension and setting forth an effective date. In the case of willfulness or where public health and safety are concerned, the suspension need not be proposed but may be effective immediately, in which case the port director will issue a notice of suspension providing reasons therefore and setting forth an effective date.

At the time a notice of suspension becomes effective, the participant will no longer be permitted to participate in the test. This is not changed by the filing of an appeal.

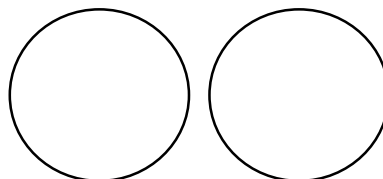


A notice of suspension may be appealed in writing to the Assistant Commissioner, Office of Field Operations, within 15 days of the date the notice of suspension became effective. In the appeal, the participant should address the reasons provided by the port director in the notice of suspension and may include additional arguments. Where the suspension resulted from a participant's failure to timely respond to a notice of proposed suspension, the appeal should address the facts or conduct charges contained in the notice of proposed suspension, provide an explanation of the problems that resulted in the proposed suspension, and state how it has corrected these problems and will maintain compliance. The Assistant Commissioner will respond to the appeal in writing within 15 days of its receipt. Where the appeal is granted, the participant will be permitted to resume participation in the test. Where the appeal is denied, the carrier may reapply to participate in the test only upon showing that all deficiencies resulting in suspension have been corrected.

A full suspension from the test may be proposed where a test participant has been suspended from operating under the APIS program. A partial suspension may be proposed where the loss of Blue Lane eligibility for a given flight (or flights) does not result in a participant's suspension from the APIS program, in which case a partial suspension decision will affect only that flight (or those flights). Where a full suspension decision was based on the participant's suspension from APIS, the granting of an appeal is conditioned on the participant's reinstatement in APIS. Where a partial suspension decision was based on loss of Blue Lane eligibility, the grant of an appeal is conditioned on restoration of that status. (See the notice of February 23, 2000, for a discussion of APIS and Blue Lane eligibility.)

A test participant also may face a proposed full or partial suspension for less than satisfactory performance of any of the conditions of operation. Also, where the port director determines that a participant's test performance is unsatisfactory in any way that may compromise the Customs enforcement mission, the participant may face a full or partial suspension.

A participant who has been suspended from the test for any reason (as of the date the notice of suspension became effective) will be required to file an air cargo manifest that lists ITI baggage under ordinary procedures (manually or electronically), in accordance with the requirements of the Customs Regulations (19 CFR 122.48(e) and 122.101), or to have its in-transit passengers take their baggage through Customs processing as provided under § 122.101(a). If there has been a full suspension from the test, all covered flights will be affected. If the partial suspension was limited to a certain flight (or



flights) or to a certain airport, only those flights or that airport will be affected.

NEW TIME ELEMENTS

Both the time period for applying to participate in the test program and the targeted test commencement date have been affected by this modification of the program test. The deadline for applying to participate in the test is extended to the date that is 45 days from the date of publication of this document, as specified in the "Dates" section of this document. The commencement date of the test is 60 days from the date of publication, also specified in the "Dates" section.

The test may be extended beyond one year if extension is warranted. The test will be evaluated six months after its implementation, using the test criteria set forth in the notice of February 23, 2000.

Dated: June 8, 2000.

ROBERT J. MCNAMARA,
Acting Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, June 16, 2000 (65 FR 37828)]

